THE "PERFECT" JOINTURE: ITS FORMULATION AFTER THE STATUTE OF USES

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In any era, widowhood has always been a disturbing prospect for a woman. For English women of the sixteenth and seventeenth-centuries it forbode a nightmare. They had no social security, retirement funds or substantial life insurance settlements to meet their financial requirements. There was some provision at Common Law for the financial support of widows but it was often times meagre comfort. Recognizing the failings of the Common Law, husbands turned to the creation of jointures in an attempt to provide for their widows.

This paper examines the development of English jointures through three phases. First, it analyzes the 1536 Statute of Uses, 27 Henry VIII C.10, and how it affected jointure formulation. Second, it appraises the impact of important cases relating to the formulation of an effective jointure. Finally, it reviews three legal treatises of historical significance, re-evaluating in particular the *First Institute* in which Sir Edward Coke asserted that his outline laid the foundation for a "perfect" jointure.[1]

Jointure Distinguished from Dower

Simply defined, a jointure was a "property provision for [the] wife, made prior to marriage in lieu of dower." Henry Black, author of the standard law dictionary, defined dower as "the provision which the law makes for a widow out of the lands or tenements of her husband for her support."[2] While a husband and wife could create a jointure only by contract, the Common Law provided a widow with her dower as a matter of law. While it might appear that dower was the preferable provision, there were weaknesses inherent in the dower system.

Commencing during the mediaeval period, a widow suing for dower could claim one-third of the lands her husband had owned during their marriage. A tenant, for example, would be required to assign his tenancy interest in the land to the widow when authorities determined that: 1) the decedent and widow had been legally married, 2) he had been seised of the land in question, and 3) he had died.[3]

The dower system proved to be an obstruction to the free alienation of title. A husband could not freely divest himself of title during marriage for concern that his widow might later claim a one-third interest in the property sold. Second, if a husband held land in "use", he was not "seised" of that land within the meaning of the law and the widow possessed no claim of dower to such property. "Use" refers to the "right of one person [the husband] to take the profits from land of which another had legal title [seisin]."[4] It did not matter that a use survived for a prolonged period of time, perhaps even longer than the life expectancy of the widow and the person seised of the property. Finally, land held jointly escaped the claim of dower. William

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Henry Rowe, editor of Francis Bacon's *The Reading Upon the Statute of Uses*, explains in his notes:

> The dower at Common Law could not in those times be depended on; because, although the husband might be in the enjoyment of large estates and to all appearance the legal owner, yet it was possible, nay probable, as uses were so general, that the legal estate on the lands was in feoffees, and . . . consequently his wife was not entitled to dower; hence, prudence demanded, that a certain estate should be settled as a provision for the wife.[5]

As an alternative, the future wife of a landed husband was frequently offered and usually accepted a joint tenancy or jointure, in lieu of dower.[6] By this mechanism, a widow held specified lands for her own use and then, at her death, passed interest in those lands to her eldest son.[7] This device had its conceptual failings. Critics of jointure argued that the settlements created conflicts of law. Courts of Equity, they observed, recognized jointures as a bar to dower, as a means of obviating double satisfaction.[8] In contrast, Courts of Law judged that the right of dower was a freehold estate which could not be barred by collateral satisfaction. Thus, they concluded, correctly, that a widow at law could claim her dower, as well as her jointure. Since a Court sitting in Equity, and another sitting at law viewed jointure differently, constant conflict was inevitable.[9]

To avoid controversies of this kind, and to quiet the critics, husbands often ensured that they held all title to land either jointly with their wives or in use so that widows would have no reason to sue for dower.[10] By opting for this alternative, husbands made jointure a shield for the free alienation of land not held in use. Moreover, fathers could better provide for the financial futures of their daughters by negotiating generous jointure settlements.

The Statute of Uses

The Statute of Uses, enacted in 1536, dramatically changed property law as it related to marriage settlements. The Statute contained five principal points pertinent to jointure. First, the Statute proclaimed that anyone holding land in use was thereafter possessed of a legal interest amounting to an estate of which he was seised.[11] This was a remarkable change of vast significance. Prior to the Statute, widows were not dowable of uses because a use had been deemed to be less than a legal interest or an estate. The Statute declared otherwise, and uses became legal interests in land, affording an owner all the benefits provided by land ownership. Additionally, uses became subject to all laws concerning land ownership, such as inheritance laws and taxation laws. The Statute made it possible for a widow to take an interest in uses (as she would other property formerly owned by her deceased spouse) by means of dower. Had the Statute provided nothing further, the judicial ramifications of this change, standing alone, would have been catastrophic. Common Law Courts would have continued in their refusal to recognize jointure as a bar to dower and widows would have leaped to claim their new dower interests in uses, doubly enriching themselves beyond anyone's intent. An important treatise on the laws concerning husband and

wife, *Baron and Feme*, states, "If other provisions had not been made, the Wives would have their Dowers as well as their jointures, and for this the Branches concerning Jointures were added to the said statute."[12]

Section Six of the Statute obviated legal chaos by specifically forbidding a widow's dual claim of both jointure and dower. If she agreed to jointure, said the Statute, she was barred from dower. If she accepted the jointure after marriage, however, then upon her husband's death, she might later refuse her jointure and demand her dower.[13] This exception was in tacit recognition that wives generally suffered a disadvantageous bargaining position and that husbands could coerce them into accepting a jointure not in their best interests.

The Statute of Uses also provided that, if for any reason a woman was legally evicted from any part of her jointure, she could claim comparable lands of comparable value under dower. It also confirmed the validity of testamentary dispositions of those persons deceased before 1 May 1536. In effect, it guaranteed to women possession of any lands willed to them prior to that date.[14] [15]

At first glance, the Statute of Uses limited the advantages of jointure as a preference to dower. Common Law provided widows with a more substantial portion of their husbands' estates than previously since dower, at law, included uses.

What were the advantages of jointure if widows could inherit uses? Alienation of land under the dower system continued to be thwarted. Landowners avoided that obstruction by employing jointure. Previously, women had faced considerable expense and exhausting delay in pursuing legal proceedings to enforce an assignment of dower. With a jointure, however, a woman entered her lands without the need for common law action. In addition, "dower [was] forfeited by treason of the husband, yet lands held in jointure remain[ed] unimpeached to the widow."[16] Finally, the Statutes of uses recognized the validity of jointure as a legally acceptable and convenient tool for British landowners.

The First Five Cases

Significant judicial decisions followed the enactment of the Statute of Uses, and clarified its meaning, revealing at the same time how inadequately legal experts had defined the formula for a "good" jointure.[17]

The *Duchess of Somerset's Case* (1554) Dyer 97b. clarified the meaning of Section Six (prohibiting dual claims of jointure and dower). Anne Seymour, Duchess of Somerset, lost her dower rights when her husband was executed in satisfaction of a felony conviction. Without jointure, Anne Seymour would have been rendered destitute, a victim of intricacies of dower inheritance. Fortunately for her, she and her husband had entered into an agreement of jointure. Statute 1 Edward VI c.12 had declared, however:

> Everie Woman that is so or shall fortune to be Wife of the parsone so attaynted convicted or outlawed shall be endowable and inhabyled to demaunde have and enjoye her dower.[18]

Anne Seymour sued for her dower in addition to her jointure for which she had a valid claim under this statute. An issue was posed whether her jointure

was formulated according to law (specifically, the Statute of Uses) and was, therefore, a bar to dower. She claimed that was not a bar because her jointure estate was limited "to her and her said husband in tail, and to the heirs, male &c. which is none of the five estates which are first limited in the Statute."[19] Section Six of the Statute of Uses states:

> Whereas divers persons have purchased or have estates made and conveyed of and in divers lands, tenements and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and wife for term of their lives; or for the term of the said wife; or where any such estate . . . hath been or hereafter shall be made to any husband and to his wife . . . every woman married, having such jointer . . . shall not claim, nor have title to have any dower.[20]

The last phrase of Section Six, very general in its scope, appeared to be applicable to almost any estate shared by a husband and wife.

The judges, sitting at law, decided that the wording of the Somerset jointure fell within the prescription of the Statute of Uses and that Seymour must be barred from dower.[21] While the decision illuminated the intent of Section Six of the Statute, it left obscure the formula for effecting a "good" jointure.

The absence of an effective formula lay at the base of *Whorwood* v. *Lord Lisle* (1547) Dyer 61b. Mrs. Whorwood sued for legacy and dower after her husband, William, willed her one-third of all his lands in addition to her jointure. She rejected her jointure and brought suit. The Court confirmed her rejection of jointure, in accordance with Section Nine of the Statute, but debated whether she was entitled to the additional lands devised to her by the will of her husband.

The difficulty of the issue centered on the definition of "jointure" and the wording of her husband's will. The experts argued that by devising to his wife one-third of his lands "with" her jointure, William Whorwood had incorporated that legacy into the jointure. When she rejected her jointure, she rejected the legacy.[22]

In a similar case, subsequently decided,[23] Brooke J. disagreed. He held, "Nor a devise of land by the husband to the wife by testament, is no barr to dower, for this is a benevolence and not a jointure."[24] Unfortunately, this lucid commentary followed the *Whorwood Case*. The judges of *Whorwood* took an equitable approach and awarded Mrs. Whorwood her full legacy and part of her dower. The value amounted to the original sum of her legacy and jointure.[25] While the Court clarified Section Nine (the proviso which allowed women to refuse jointures made after marriage and to sue for dower), by noting when it was inapplicable, it refused again to define a formula for effecting a "good" jointure.

With *Villers* v. *Beamont* (1556) Dyer, 146a., judges faced another puzzling dilemma in which a document failed to create, unmistakably, a jointure. Great Grandfather G. Beamont had sold certain lands to "R. C." for thirty

years in exchange for £70. He retained the remainder with a life estate for his wife, a life estate to the grandfather, and life estates to the father R. Beamont, and Colet (the daughter of "R. C."), the latter of whom were husband and wife. Thereafter, the remainder was to pass to the heirs of R. Beamont and Colet. Upon the death of R. Beamont, however, Colet remarried. She and her new husband, Villers, alienated the land and "took back an estate in fee to the second husband only." The heir of R. Beamont and Colet, N. Beamont, entered the lands, an act justified by Statute 11 Henry VII c.20.[26] This law stated:

> If any Woman which hath had or hereafter shall have any estate in Dower . . . with any others after taken husbond, discontynued aliened releassed . . . of the same . . . that all such recov*eez (discontynuance) . . . be utterly voide and of none effecte. And it shall be lefull to every psone and psones . . . to be recov*ed.[27]

In other words, the statute made it lawful for a rightful heir to take possession of property which had been ineffectually and illegally conveyed by a dowager.

Villers brought suit against N. Beamont to reclaim the lands. N. Beamont argued that the grant had been in consideration of £70 and the impending marrriage between Colet and R. Beamont. He urged that the remainder was meant for Colet's jointure. Justice Dyer noted, however, "that no word of any marriage to be had between R. Beamont and Colet is expressed in the indenture, nor any word of any jointure to Colet." Dyer maintained since the contractors neglected to include such a premise to the transaction, one could not aver such intention. In his argument, Dyer cited precedents in which the Courts had rejected parol evidence.

From Dyer's analysis, one might conclude that the Court entered judgment for Villers. Dyer himself never explicitly relates the result of the conflict. Only in the last paragraph of his extensive analysis does Dyer admit:

> But Stamforde, Browne and Brooke, argued to the contrary . . . the entry of Beamont was lawful by the Statute 11 H. 7. for they expounded that phrase "given by ancestors, &c." to be any manner of way assured to the woman in jointure either for money (as fewe marriages be made nowe-a-dayes without it) or else freely; and that the effect of that which is found by the assignment of "as well in consideration of the said marriage &c. as of the sum &c." is contained within the indenture, and so their finding is no wise contrary thereto.[28]

In this last paragraph, Dyer acquiesced to the will of the majority opinion and the equity of the solution. Judgment was entered for N. Beamont. Without the text of the original Beamont contract, the historian cannot reasonably assess Dyer's analysis nor balance it against the opinion of the other judges.

Another similar case whose judgment casts light on the *Villers Case* is *Ashton's Case* (1564) Dyer 228a. Richard Ashton Sr. gave the use of certain lands to his prospective daughter-in-law, Elizabeth Bavenport, for her life.

In exchange, William Bavenport gave seven hundred marks along with his daughter. Richard Ashton Jr. and Elizabeth Bavenport married. After Richard Ashton Sr. and Richard Ashton Jr. died, Elizabeth Ashton sued for her dower in addition to the grant which she obtained from Richard Ashton Sr.

The question before the Court was whether the grant was a jointure and a bar to dower. Justice Dyer stated, 'She was not his wife at the time of the feoffment made and . . . the said feoffment was not made to the lands of the husband, nor by the husband according to the Statute of 27 H. 8 (c. 10). "The court decided, however, that Richard Ashton Sr. had made a good jointure and barred Elizabeth from her dower.[29]

As in the *Villers Case*, the majority felt that, while the grant was not given for jointure expressly, one should reasonably interpret the gift to be in the nature of a jointure. The Court first established the averment technique in the *Somerset Case*. The Court found the wording of the Somerset jointure "compatible with," if "not exactly like," the specified wording in Section Six of the Statute of Uses. Thus, it mattered not for Elizabeth Ashton that a party other than her husband had made the grant. Browne, Brooke, and Stamforde noted in the *Villers Case* that Statute 11 Henry VII c. 20 recognized a grant "given to the seid husbond and wif in taill or for t*me of lyfe by any of the Auncestors of the seid husbond."[30] Since Richard Ashton Sr. was not only an ancestor but was the father of the groom, it struck the court as necessary logic that it determine the grant to be a jointure settlement.

Rationale evolved. With each case, the formula for a "good" jointure was more precisely defined. Thus far, however, no court had reached beyond the specific issues presented to it nor attempted to provide an all-encompassing definition, or guide to the creation of an effective jointure. By 1566, Dyer had accepted the averment process for an unexpressed jointure.

Dame Dennis' Case (1566) Dyer 247b. presented a different problem, however. Sir Maurice Dennis granted that, after his marriage to Elizabeth Statham, the two of them and their heirs would share certain lands. The marriage occurred. Maurice died. Thereafter, Elizabeth entered upon the lands and sued for her dower. She did not prevail. Dyer noted that the judges accepted "an averment that the grant was for a jointure."

The issue in *Dame Dennis's Case* was whether a grant of lands in fee simple would make a good jointure under the law. Catlyn, Dyer and Saunders argued that the Statute of Uses "speaks of jointure 'for terms of life, or otherwise'." This phrase, they determined, included all types of estates. Browne and Whyddon disagreed. They drew again from 11 Henry VII c. 20 to show that a grant must be limited "for life or in tail, jointly or severally with the husband."[31] The majority opinion of Catlyn, Dyer and Saunders ruled in this case and required that Elizabeth accept the fee simple jointure Maurice had granted her before their marriage.

In retrospect, the historian might feel the frustration felt by sixteenth-century legal practitioners in their search for jointure guidelines. The courts never presented the legal community with a package formula for a "good" jointure. That was not (nor is it today) the role of Common Law Courts, however. These courts apply or interpret, as necessary, legislative laws. They adjudicate issues presented to the bench by contending parties. Under

this English system, the Common Law "emerges" slowly. It unfolds and evolves as new disputes or concerns come before the courts for resolution.

In the *Whorwood, Somerset, Villers, Ashton,* and *Dennis* cases, the Common Law system functioned in exemplary form. Insular clarification spanning 25 years contributed to the evolution of jointure formulation. The Common Law emerged as the society it served matured and developed. What remained confused or undetermined about jointure formulation would find clarification with the ripening of time.

Thirty-seven years after the passage of the Statute of Uses, Sir Edward Coke[32] assembled the consensus of the law pertaining to jointure, and extended thought beyond consensus with his own incisive understanding of English Common Law.

The Vernon Case

Sir Edward Coke's reflections on jointure appeared in his report on *Vernon's Case* (1592) 4 Co.Rep.1. Judge Dyer wrote a report on this case but Coke's analysis went far beyond anything previously recited in case law on jointure.

The facts of the *Vernon* case were simple enough. During his marriage, John Vernon alienated certain land and took a use in it for himself, with a remainder to his wife, Mary, for her life, then to his heirs. Mary Vernon entered those lands after his death and simultaneously sued for her dower. The case appeared to be a jointure by averment which is exactly what the defendant and heir of John Vernon pleaded. Mary complicated the situation, however, by claiming that her husband placed a condition upon the grant. Mary, he had said, was to act as executrix of her husband's will and perform associated necessary tasks. She fulfilled her part of the bargain, she argued, and in consideration therefore acquired the lands of the grant. She brought suit for assignment of dower because the grant was not a proper jointure.[33] Her suit was not successful.

Coke remarked that the presiding judges resolved five points. First, Coke explained that a right to inheritance or freehold could not be barred by collateral satisfaction. He reasoned that a grant of land failed to bar dower "because she [a wife] had no title of dower at the time of the acceptance of satisfaction, but it accrued after." Coke noted, however, that the Statute of Uses amended the Common Law so that jointures acted as a bar to dower. Therefore, he said, the question to answer in the Vernon case was whether the grant was a jointure, if not, Mary Vernon deserved her dower.[34]

In examining whether Mary's grant was a jointure, Coke made his second point. "If a man makes a feoffment to the use of himself for life, and afterwards to the use of his wife for her life, for the jointure of his wife, that such estate in remainder is within the intent of the said act 27 H.8." This issue relates back to the *Somerset* case which Coke cited. Failure to grant a jointure using the exact wording of the Statute of Uses did not automatically void the document. Coke referenced the *Ashton* case, as well. He explained that, in the *Ashton* case, the donors made the grant before there was a husband and wife. Moreover, the grant was made to a woman alone. Despite these differences, the Ashton grant fell within the intent of the Statute. Coke implied by

comparison that John Vernon intended, though not expressly, that his grant be for Mary's jointure.

Coke emphasized, in making his second point, that the jointure had to be good immediately after the death of the husband. He made an often quoted analogy to clarify this requirement.

> If the husband makes a feoffment in fee to the use of himself for life, and afterwards to the use of B. for life, and afterwards to the use of his wife for life, for her jointure, it is not within the act although B. dies, living the husband.[35]

Coke suggested that B. might die after the husband in which case, B. might prevent the wife from obtaining her jointure. Thus, even if B. were to die before the husband, the jointure would be invalid from its inception because of the contrary contingency.

Coke's third point resolved the problem of conditional jointures such as Mary Vernon's. Coke argued that dower, for which jointure was a substitute, was a life estate. A condition on a life estate did not alter the fact that it was still a life estate. Therefore, if a woman accepted a jointure by fulfilling a condition, the jointure fell within the intent of the Statute of Uses. Coke stated:

> Forasmuch as an estate for life upon condition, is an estate for life, it was within the words and the intent of the act, if the wife after the death of her husband accepts it; for it is agreed that a jointure is a competent livelihood of freehold for the wife, to take effect immediately after the death of the husband, for the life of the wife, if she herself is not the cause of the determination of forfeiture of it.[36]

In this passage, Coke not only decided the issue of the conditional jointure but again defined jointure. Definition continued to be his primary concern throughout his analysis of the *Vernon* case. The two required elements mentioned here (that the jointure be good upon her husband's death and that it be a life estate or greater) are the first two jointure requisites he acknowledged in the *Institutes*.

Coke's fourth point centred on election and reiterated Section Nine of the Statute of Uses. A woman who agreed to a jointure before marriage was barred from dower. A woman who accepted a jointure during marriage, however, might refuse her jointure and elect to have her dower. Coke cited the *Ashton* case again as an example of the first clause in effect. He quickly pointed out, though, that the *Ashton* grant constituted a complete jointure. He explained that a woman might accept a grant before marriage for part of her jointure and another grant after marriage for the remainder of her jointure. Upon her husband's death, she could refuse that portion granted after marriage and collect the ante-nuptial grant and her dower. Coke remarked, "The words of the act are, for the jointure for the wives, and not for part of their jointures." Coke did not cite a case for this postulation, though he may have had one in mind.

The last point Coke made pertains to the averment of jointure. Coke refuted the idea that the grant was consideration for the performance of the will. He maintained "it may be averred to be for the jointure of his wife, for the one consideration stands well with the other." Coke suggested that, as easily as Mary could claim one reason for the grant, he could argue another. It was one reasonable conclusion against another. Coke referred to the debate in the *Villers* case to substantiate his position.[37]

While this was the last point Coke discussed, he continued his analysis of *Vernon* and other cases. These last comments were not as lucid as the first of his evaluation, but he raised several important issues.

First, Coke discussed the problem of fee simple jointure. In the *Dennis* case, Dyer reported that Judge Brooke rejected the concept of a fee simple jointure. Browne and Whyddon also argued against it, stating that the form was not acknowledged by 11 H.7. c.20. In the *Vernon* case, Dyer reaffirmed his belief that a fee simple jointure was valid.[38]

Coke supported Dyer's stance by dismissing the relevance of 11 H.7. Coke stressed the 11 H.7. aimed at restricting alienation of only dower and other fee tail grants—not necessarily jointures. Not once does the word "jointure" even appear in the statute. Naturally, 11 H.7. failed to cover fee simple inheritance, "for to restrain such estate that it shall not be aliened is repugnant and against the rule of Com. law." Therefore, Coke insisted, since 11 H.7. addressed a separate issue, 27 H.8. was the important statute to examine for a ruling on fee simple jointure.

Coke re-introduced the phrase "for term of life, or otherwise in jointure" from the Statute of Uses. He claimed that "otherwise" referred to all other estates conveyed to the wife. He asserted that otherwise "extends to all other estates conveyed to the wife not mentioned before in the act, which are as, or more, beneficial to the wife." Something more beneficial than a life estate included a fee simple grant.[39]

Another issue of concern to Coke which he addressed at the end of his report was jointure by devise of land. Brooke argued that a devise of land was no bar to dower because it was a benevolence. Coke agreed that, until expressed differently, wills must be taken with the traditional intent. Second, Coke said, "The whole will concerning lands by the Statutes of 32 and 34 H.8 ought to be in writing, and no averment ought to be taken out of the will." In this postulation, Coke depended on the wording of the Statute of Wills to justify his position that one could not aver jointure from a devise.[40]

Coke's analysis of *Vernon's* case ended with a discussion of the devise of land. Oddly Coke failed to advise his readers what the majority ruled in the *Vernon* case. From his discussion of the last four points, however, one may presume that Mary Vernon was barred from her dower.

Dyer's comments support such a conclusion until his last passage which reads:

> But for the exception to the pleading above all against Dyer; and Harper [a dissenting judge] pertinaciously adhered to his opinion as above; and all in favor of Dower, and that the estate above cannot by possibility be intended for jointure.[41]

Dyer thus suggested that all the other judges disagreed with him and allowed an assignment of dower. Unfortunately, Dyer failed to identify "the pleading above." Did "the pleading above" refer to the *Vernon* case? If so, Coke may have been using the *Vernon* case to illustrate good law badly applied.

Dyer's remarks, which precede the quotation cited above, relate to a different case and offer some clarification.

> Wherefore also Dyer thought that although the fee simple be appointed over to the wife, or a joint estate made to the husband and wife in fee, it may, if it be not expressed in the conveyance by writing to the contrary, be averred for jointure, contrary to the report of Brooke tit. *Dower.*[42]

Dyer was clearly speaking of another case because Mary Vernon's grant was a grant in fee tail. Dyer used this opportunity to take another intellectual cuff at Brooke on the fee simple/fee tail debate. Since the passage refers to another case, the phrase which followed might be a continuation of that argument.

The wording of Dyer's last passage fits, indeed, with the Brooke rebuttal which it follows. "But for the exception to the pleading above, all against Dyer" could mean that, on the Brooke case, all the judges opposed Dyer. "Harper pertinaciously adhered to his opinion as [explained] above [in the Brooke case]." Finally, "the estate above cannot by possibility be intended for a jointure" probably refers to the Brooke jointure. If Dyer had wanted to decide the *Vernon* case, he would have spoken of the *grant* or *gift* not being intended for a jointure. An estate was not the issue of debate in the *Vernon* case as Dyer presented it. The jointure was conditional but nowhere did Dyer refer to a conditional estate.

Secondary sources confirm that the court refused Mary Vernon her dower. John Bryant explained, "The Court determined that she was barred of her dower by acceptance of the provision [jointure] in lieu of it."[43] Sidney Bell confirmed, "It was held that acceptance did deprive the widow."[44] And Edmond Atherley stated:

> The Court resolved—that although the estate limited to the wife was upon condition . . . for as much as an estate for life upon condition, was an estate for life, it was within the words and intent of the act IF THE WIFE AFTER THE DEATH OF HER HUSBAND ACCEPTED IT.[45]

The point Atherley raised is that Vernon's jointure barred dower because she accepted the jointure. He suggested that it mattered not whether the grant was within 27 Henry VIII c. 10 from its inception; she waived dower by accepting it. The diffficulty with this, he explained, is that if jointure was void before her acceptance, collateral satisfaction would not have barred dower. "Therefore, there may be reason to think that a jointure, such as in *Vernon's* case is nothing more than a MERE EQUITABLE ONE."[46]

Evidence in Coke's analysis of *Vernon's* case indicates that Atherley was correct. The reasoning in Coke's third "point" suffers when examined again. Coke argued:

> If the condition binds her to any unreasonable thing she might have waived it, but when she . . . enters and accepts the conditional estate for her jointure, she is barred of her dower.[47]

Coke asserted that the widow's acceptance validated the jointure. He noted earlier, though, that a jointure should be valid from its inception and that no subsequent action would make it so. He started:

> Quod ab initio non valet, in tractu temporis non convalescet [that which is bad in its commencement improves not by the lapse of time] . . . Quae mala sunt inchoata in principio, vix est ut bono peragantur exitu [things bad in principle at the commencement seldom achieve a good end].[48]

Coke was not persuasive in his argument that a conditional jointure was valid. If it was not valid, Mary Vernon should have received her dower.

In retrospect, the outcome of the *Vernon* case is of little consequence when compared to the relevance of Coke's analysis. Whilst his argument on the validity of conditional jointure may prove less than adequate, it does not necessarily follow that conditional jointure failed the test of 27 Henry VIII c.10. In any case, his analysis in general profoundly affected the definition of jointure and the establishment of a jointure formula. Coke's review of *Vernon's* case provides the basis for his discussion of jointure in his *Institutes*, the authoritative treatise on sixteenth and early seventeenth-century jointures.

The Treatises

Coke's *First Institute* was not the first treatise written after his *Vernon* report. An attorney "of the Duchy of Lancaster," Mr. John Brograve wrote an article on jointures in 1576 which was published in 1648, entitled *Three Learned Readings Upon Three Usefull Statutes*. Brograve organized his work into ten chapters. In each chapter was an outline of five to 23 cases. In each case, he summarized pertinent facts and determined whether jointure created was valid. Each statement of facts is very specific.

Two statements of fact compare with cases already discussed in this paper. In Chapter Four, case number 16 reads:

> I. S. enfeoffeth I. D. to the Use of the husband and wife, and the heirs of the husband, for &c. and before the Statute of 27 I. S. enfeoffeth the husband and wife the statute is made, the husband dyeth, the wife enters; thus is &c.[49]

These facts resemble the *Somerset* case. At issue is the wording of the grant. As in the *Somerset* case, the wording ". . . and the heir of the husband, for &c. . . ." met the Statute's requirements.

Brograve's case number 18 states:

> I. S. covenanteth with I. D. in consideration of a marriage, to be betwixt A. his son and B. that his Mannor of D. after his death shall

> remaine to A. his sonne and B. his wife, in Fee for &c. the Father and A. die, the wife enters; thus is not &c.[50]

This example is like the *Ashton* case. In *Ashton*, however, the grant was a life estate and not specifically a fee simple. Furthermore, the Court determined that Ashton's grant was a good bar to dower.

What Brograve ignores in his collection of cases is a statement of facts like those in the *Vernon* case. Perhaps something other than the *Vernon* case prompted Brograve to write his article. The *Vernon* case was not considered a "landmark" until Coke wrote his analysis of it after 1600. It is probably nothing more than a coincidence that Brograve's guide succeeded the *Vernon* case by four years and the Statute of Uses by forty.

Further discussion of Brograve examples is not pertinent to this paper. Brograve wrote a guide, perhaps for attorneys who could compare their cases of jointure to the examples given. Brograve outlined circumstances in which jointure would be valid but he did not define a jointure formula.

Coke published *First Institute* in 1628. He proposed to update Littleton's work on the Common Law. In his preface, Coke wrote, "We have in these *Institutes* endeavored to open the true sense of every of his [Littleton's] particular cases."[51] In a very organized fashion, Coke specified, in his chapter on dower, six requisites "to the making of a perfect jointure within the statute."[52]

First, Coke explained, a woman's jointure must take effect immediately after the decease of her husband. While this requirement was not one of Coke's principal points in the *Vernon* case, he had stressed immediacy as being vitally important. Secondly, said Coke, "It must be either in fee, tail or for term of life." Again, this was not a primary focus in the *Vernon* case but Coke decided the fee simple/fee tail debate in a lengthy discussion there.

Coke's third requisite introduces an issue not before discussed in this paper. He argued that an estate or its profits must be conveyed to the wife directly and not to another party in trust.[53] His fourth requisite came out of his discussion of *Vernon's* case. Coke asserted that a jointure must be "in satisfaction of her whole dower, and not part of her dower." Fifth, the contract or grant had to express or aver that the jointure satisfied the dower interest. To this, Coke added "a devise by will cannot be averred to be in satisfaction of her dower unless it be so expressed in the will." Finally, Coke's sixth requisite was a reiteration of the Statute. The jointure could be made before or after marriage.

Coke's comments in the *First Institute* (with the exception of requisite number three) were simply a polished outline of his jointure definition from the *Vernon* case. Coke admitted, "I have touched these points the more summarily, because they are resolved at large with reasons thereof in Vernon's case."[54]

In 1632, a work called *The Woman's Lawyer* expanded upon Brograve's treatise. At least one editor has suggested that the author modelled this writing on jointure after Brograve's guide. The editor concludes:

> The collections gathered, as I thinke, by some well learned and industrious student out of Mr. Brograve's reading, though they want

> of fulnesse and perfection which the owne pen of so great a lawyer might have given them.[55]

Unfortunately, two prefaces reveal little else about the creation of *The Woman's Lawyer*. "I. L." suggests that if the author is not dead, the work was written a long time ago.[56] "T. E." states:

> By whom the following Discourse was composed, I certainly know not . . . Those vitia Scriptoris, and authors, which I found I amended and have added many reasons, opinions, cases, and resolutions of cases to the author's store.[57]

Since "T. E." placed all his comments in the original text and not in footnotes, it is impossible to tell his additions from the original. For that reason, it is impossible to follow the development of jointure from Brograve's treatise to Coke's *Institutes*. In its edited condition, *The Woman's Lawyer* post-dates the *Institutes* in publication and cites the *First Institute*, as well as *Vernon* and other cases. *The Woman's Lawyer* does not, however, discuss Coke's six requisites nor does it address the problem of conditional jointures. Stylistically, *The Woman's Lawyer* reads much more like Brograve's guide and does not give a formula for effecting a good jointure. Coke's *First Institute* must be considered, therefore, the most important legal treatise of its day relating to jointure.

Coke's "Perfect" Formula Reviewed

This study of jointure development began with the legitimization of jointures by the Statute of Uses in 1536. It ends with a formula for the "perfect" jointure as stated by Coke in 1628. Following the fee simple/fee tail debate and the devise of land controversy, one sees that the development of the jointure formula was not a linear progression. The definition of jointure grew barely clearer as judges struggled with the succession of cases which followed the Statute. Sir Edward Coke's report on *Vernon's* case demystified jointure formulation. He later polished his ideas and unveiled his six element formula in the *First Institute*.

Two basic questions remain. The first is whether Coke's formula really produced a "perfect" jointure. The second is whether the cases discussed in this paper would have been decided in the same way if the presiding judges had used Coke's formula.

An analysis of the cases next to Coke's formula shows that only two of the cases might have been decided differently. The *Whorwood* case might have been. Recall that Mr. Whorwood willed his wife one-third of all his lands "with" her jointure. The Court decided that this devise was meant to be part of the jointure provision, not a benevolence in addition to the jointure. Coke's fifth requisite provided that a devise is not a jointure until expressed as such. In 1547, when the *Whorwood* case was decided, that requisite had not been clarified and the court opted for an equitable solution, contrary to Coke's subsequent analysis.

If the case had been judged after 1628, the court might have decided that "with" was not sufficiently specific to make the devise a jointure. Thus,

Mrs. Whorwood might have been awarded her legacy and her dower. No one can say for certain what a later court would have decided. This re-examination of the *Whorwood* case, though, emphasizes that the development of jointure formulation was not predictable or smooth.

The second case that calls for re-examination is the *Vernon* case. Why return to the *Vernon* case when Coke drew his formula from that decision? The *Vernon* jointure embodied something more than Coke's six requisites: it contained a clause of conditionality. Coke argued that this condition did not matter because Mary Vernon accepted it. As noted above in this paper, that reasoning is flawed.

The *Vernon* decision was an equitable one. Mary Vernon agreed to her jointure after she was married. She had a right, according to the Statute of Uses, to reject her jointure. Coke said she would and should have done so if the condition was unreasonable.

Query what Coke would have said if Mary had agreed to her jointure *before* marriage, she could not later refuse it. Would Coke have argued that she should have refused it before marriage if the condition was unreasonable, and since she did not she was bound by her choice? No. Coke probably would have realized that the condition of having to serve as executrix (a condition precedent)[58] voided the jointure since Mary would not enjoy her settlement immediately after her husband's death. He would have noted, therefore, that acceptance of a void document does not make it legal.

The fact that Mary agreed to her jointure after marriage and had the option of suing for dower lulled Coke into regarding the condition as insignificant. Coke should have anticipated the hypothetical scenario of *Vernon* and dealt with it. Alternatively, he should have realized the significance of the condition and discussed it instead of discounting its importance, relying on the notion that Mary Vernon had other options open to her. If he had pursued such courses, he might not have concluded with an unsatisfactory explanation of the conditionality in the *Vernon* case. It seems that Coke used the *Vernon* case simply as a vehicle for his definition of jointure.

The re-evaluation of *Vernon* suggests that Coke's six element formula for jointure is incomplete; his formula was not "perfect". He should have constructed a seventh requisite on the conditionality issue. It can be argued that, since the proposed *Vernon* scenario never occurred, it does not matter that Coke failed to address the situation. Moreover, one could argue that Coke would have been foolish to establish a requisite without the backing of a precedent ruling. Coke established his third requisite, though, without citing a precedent case. In addition, Coke envisioned several scenarios within his *Vernon* analysis to fully define jointure.

Perhaps Coke avoided the conditionality issue in his final analysis specifically because he faced precedent. At first, this statement sounds odd. Why would Coke avoid an issue which good Common Law precedent resolved? Because *Vernon* was not good law! Mary Vernon's jointure was invalid not because the condition was unreasonable but because it prevented immediate settlement of jointure. For Coke to construct a requisite on conditionality, he would have been forced to analyze the Vernon condition in detail and reveal that the Court had made a mistake. Mary Vernon should have received her

dower as well as the benevolence bestowed upon her by her compliance with the conditions of her husband's will.

Despite this single flaw in Coke's *First Institute*, his analysis of jointure formulation is a marvel of illumination. His language is simple and concise, his explanation clear. Dyer wrote on jointure several times but never mastered the topic as Coke did. Perhaps Dyer was too early in time, when legal precedent was not sufficiently established to inspire a complete review like Coke's *Vernon* report. Coke published his report on that case almost 25 years after the Court heard it.

This study of jointure formulation exposes several truths: first, that a jointure formula evolved quite slowly after the Statute of Uses. While the development advanced, it was often "sidetracked" with "dead end" decisions like *Whorwood*. Secondly, Common Law judges contributed relatively little in defining a broad image of jointure. They evaded the important issue of formulation and offered only symptomatic cures for the plaguing problem of formulation obscurity. Finally, Sir Edward Coke provided a valuable, if slightly incomplete, model for the "perfect" jointure.

What this study cannot conclusively determine is the intention of the relevant parts of the Statute of Uses. Without any documented legislative history, it is difficult to evaluate whether the point was: a) to protect the widow's inheritance rights while preventing her from impoverishing the heir by taking both jointure and dower or, b) to limit her rights as convenient for the father-in-law, husband and son. The latter explanation seems improbable since the law required that a woman or her father (presumably concerned with her future welfare) accept and sign any jointure agreement. Thus, a father-in-law or husband could not exert undue control or ignore a woman's property rights.

Evaluating the Statute at face value, one notes that Section Six specifically prevents the impoverishment of heirs by disallowing claims for both jointure and dower. The Court, at least in each of the cases discussed above, gives the mandate great weight and invalidated every claim for both jointure and dower. Thus, the most reasonable conclusion is that the legislators intended to promote women's property rights by recognizing the validity of jointure agreements and to protect heirs by disallowing double satisfaction.

Finally, like any historical investigation, this study raises as many questions as it answers. First, was the development of jointure formulation an unusually slow process under Common Law—or did Common Law respond as slowly to other important legal questions? Secondly, what does this study indicate about Coke's work in general? Coke produced an invaluable analysis of a particular Common Law development but was he complete in his descriptions and evaluation? One who finds reasoning flaws in the first section of Coke's work is left to wonder about the reliability of the balance of Coke's work. Finally, inherent is a social history question, whether women truly benefited from jointures during the development period. Or did they face just as many battles in securing their financial requirements as they would have with dower? Did less generous landowners manipulate the ambiguities of jointure formulation to deprive women rather than provide for them? For widows, did the nightmare continue?

NOTES

[1]Sir Edward Coke's discussion of jointure has faced little critical review in the last three hundred years for several possible reasons. First, Coke's reputation as an authority on English law and its historical development perhaps intimidates critics who might examine his work. T. F. T. Plucknett, *A Concise History of the Common Law* (Boston: Little, Brown and Co., 1956), p. 283. Moreover, many historians, when examining marriage and related arrangements, begin not with the Statute of Uses which recognized jointures but with the Hardwicke Marriage Act of 1753 since that statute clearly defined the steps necessarily taken to enter into the institution of marriage. 26 Geo. II, c.33. Third, few marriage settlements or jointure agreements survive from before the beginning of the seventeenth-century, making research difficult. Finally, historians have focused on this period and on the Statute of Uses with an interest in property law and primogeniture. Lloyd Bonfield, *Marriage Settlements 1601-1740* (London: Cambridge Univ. Press, 1983), p. 8. Influenced by the advancements made by the women's movement in the last twenty years, modern scholars have become interested in the legal position of and provisions for women in early modern England.

[2]Henry C. Black, *Black's Law Dictionary* (St. Paul: West Publishing Co., 1979), pp. 753, 442.

[3]*Baron and Feme: A Treatise of Law and Equity Concerning Husbands and Wives*, 3rd rev. ed. (London: T. Waller, 1738), p. 101.

[4]Black, p. 1382.

[5]Francis Bacon, *The Reading Upon the Statute of Uses* 1642; reprint ed. (London: W. Stratford, 1840), p. 169.

[6]J. Johnson, ed., *The Laws Respecting Women* (777; reprint ed. (London: Oceana Publications, Inc., 1974), p. 201.

[7]Bonfield, p. 2.

[8]*Baron and Feme*, p. 121.

[9]To complicate matters further, each court viewed a woman's ability to contract or enter into marriage settlements differently. Traditionally at law, a married woman or "feme covert" could not contract. Law courts regarded husband and wife as a single entity which could not contract with itself. Therefore, if a woman agreed to a jointure settlement after her marriage, a law court might refuse to bar her dower, using the collateral satisfaction justification and/or using the justification that the jointure failed since the woman could not contract.

Premarital jointures brought into law courts created havoc since single women could contract. Even if the single woman had not signed the settlement, the bride's parents' consent acted to bind the bride. Note, though, that until the Statute of Uses, law courts did not recognize jointures as official legal instruments. These factors, combined, made it very difficult for parties to anticipate the outcome of settlement suits brought in law courts. Bonfield, p. 5.

In contrast, equity courts allowed women more bargaining freedom. A jointress was a party to a contract and her consent to marry served as consideration in exchange for the jointure settlement. William Cruise, *Digest of the Law of England*, Vol. 1 (London: Butterworth, 1818), p. 231. The fact that a woman failed to secure a settlement before marriage did not necessarily matter in equity. She could still recover jointure lands settled after marriage, instead of dower. It is doubtful that an heir could force a jointure of less than one-third of any estate upon a widow by suing in equity. The equity courts defended the financial security of widows. Using the equity route, though, a widow might disclaim dower for a more generous jointure settlement. Maria Cioni, *Women and Land in Elizabethan England With Particular Reference to the Court of Chancery* (London: Garland Publishing, Inc., 1985), pp. 198, 219.

The differing approaches of the courts of law and equity created a great deal of confusion and probably led to forum shopping. To prove such a theory, however, one would have to investigate thoroughly pre-1536 settlement disputes.

[10]Sydney S. Bell, *The Law of Property as Arising from the Relations of Husband and Wife* (Philadelphia: J. Johnson, 1850), p. 218.

[11]Danby Pickering, ed., *Statutes at Large*, Vol. 4 (Cambridge: Benthan, 1763), p. 360.

[12]*Baron and Feme*, p. 151.

[13]Pickering, p. 362. The information on jointures made after marriage, contained in this paragraph, came from section nine of the Statute of Uses.

[14]Pickering, p. 363.

[15]Strictly speaking, landowners could not devise property by will until 1540. K. B. Mc Farlane, *The Nobility of Later Medieval England* (Oxford: Clarendon Press, 1973), p. 63. They avoided

primogeniture, however, by employing uses. They enfeoffed their property to another, took back a use in that property and devised the use as they pleased. Moreover, landowners directed in their wills how feoffees should devise their interests in the property. Through uses, landowners managed to devise property and, thus, provide for their younger children.

The Statute of Uses transformed uses into legal interests which were no longer devisible. Naturally, landowners reacted violently to this aspect of the 1536 legislation. The hostility found expression along with other grievances in a rebellion known as the Pilgrimage of Grace. The Statute of Wills of 1540 signified Henry VIII's willingness to compromise. This statute allowed landowners to devise two-thirds of the land they held in feudal tenure. J. M. W. Bean, *The Decline of English Feudalism, 1215-1540* (New York: Barnes & Noble, Inc., 1968), p. 258.

When the Statute of Uses confirmed testamentary dispositions predating 1 May 1536, it referred to dispositions concerning land held in use.

[16] Johnson, p. 202. A felony conviction for the husband did not result in a forfeiture. See Note 18.

[17] The early modern practice of reporting case decisions differs dramatically from the modern system. Today judges write opinions immediately after rendering decisions. Each opinion includes a brief description of the facts, relevant information concerning the parties involved, legal analysis of those facts, and the judge's decision.

Little first hand information exists for sixteenth-century trials. The "Reports" which remain are judges' reviews of important cases which they heard. Often judges wrote years after hearing the cases. Therefore, in reporting cases, judges regularly omitted significant information such as key facts of the case, the parties names and even the decision rendered. The purpose of a report was to clarify or highlight a new point of law or line of reasoning. As a result, details of the particular cases were lost. Such a reporting system creates major problems for historical review as will become apparent below.

[18] *Statutes of the Realm* 1810; reprint ed., Vol. IV, pt. 1 (London: Dawsons of Pall Mall, 1963), p. 21.

[19] James Dyer, *Reports*; reprint ed., Vol. I (London: Butterworth, 1974), p. 976.

[20] Pickering, p. 362.

[21] Dyer, I: 976.

[22] Dyer, I: 616.

[23] Anonymous Case, 6 E.6 B Dower 69 (1552).

[24] Robert Brooke, *Brooke's New Cases* (London: Best and Place, 1578), p. 69.

[25] Dyer, I: 616.

[26] Dyer, II: 1466.

[27] *Statutes*, II: 583. Where abbreviated, words in quoted text have been expanded.

[28] Dyer, II: 1466.

[29] Dyer, II: 228a.

[30] *Statutes*, II: 583.

[31] Dyer, II: 2476. Black defines fee tail as "A freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee." Black, p. 554.

[32] Sir Edward Coke was born in 1552 and attended Trinity College, Cambridge, where he became the High Steward of the University. He studied law at the Inner Temple, was called to the bar in 1578 and became Speaker of the House of Commons fifteen years later. During the early years of his career, Coke, inspired by Queen Elizabeth, served as a great supporter of royal prerogative. In 1594, Coke championed Elizabeth's causes as Attorney General.

Coke's political views change after 1606, though. As Chief Justice of Common Pleas, Coke campaigned against royal prerogative and worked to uphold the supreme authority of the Common Law. In 1613 Coke, transferred to another court, served as Chief Justice of Kings Bench. There he continued to make political trouble for King James I and was dismissed in 1616. Coke's career did not end there, however. In 1621, he acted as leader of the parliamentary opposition but was jailed in the Tower in 1622 with his papers confiscated. He returned to parliament in 1628 but died in 1634. Heralded as a preeminent legal scholar, Coke is most well known for his *Reports*, published in 1600, and his *First Institute* of 1628. Plucknett, pp. 242-245.

[33] Dyer, III: 317a. And Edward Coke, *Reports*, 1658; reprint ed., pt. IV (London: T. Whieldon, 1977), p. 1.

[34] Coke, *Reports*, IV: 2.

[35] Coke, *Reports*, IV: 3a.

[36] Coke, *Reports*, IV: 3a.

[37] Coke, *Reports*, IV: 36.

[38] Dyer, III: 317b.
[39] Coke, *Reports*, IV: 4a.
[40] Coke, *Reports*, IV: 4b.
[41] Dyer, III: 317b.
[42] Dyer, III: 317b.
[43] John Bright, *A Treatise on the Law of Husband and Wife as Respects Property* (London: William Benning and Co., 1849), p. 440.
[44] Bell, p. 223.
[45] Edmund Atherley, *A Practical Treatise of the Law of Marriage and Other Family Settlements* (Philadelphia: John Littell, 1840), p. 263.
[46] Atherley, p. 263.
[47] Coke, *Reports*, IV: 36.
[48] Coke, *Reports*, IV: 3a. Translation into English Black, pp. 1115, 1127.
[49] John Brograve, "Jointures," in *Three Learned Readings Made Upon Three Very Usefull Statutes* (London: W. Lee, 1648), p. 82.
[50] Brograve, p. 82.
[51] Edward Coke, *The First Part of the Institute of the Laws of England*, 1628; reprint ed. (London: Butterworth, 1832), p. xxxvii.
[52] Coke, *First Institute*, p. 476.
[53] Coke, *First Institute*, p. 477.
[54] Coke, *First Institute*, p. 478.
[55] "I. L." and "T. E.," eds., *Woman's Lawyer* (London: John More, 1632), p. 196.
[56] *Woman's Lawyer*, p. first preface.
[57] *Woman's Lawyer*, p. second preface.
[58] "A condition precedent is one which must happen or be performed before the estate to which it is annexed can rest or be enlarged; or it is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." Black, p. 266.

BIBLIOGRAPHY

I. Primary Sources

Bacon, Francis. *The Reading Upon the Statute of Uses*. 1641. Reprint edited by William Henry Rowe, Esq. London: W. Stratford, 1806.
Brooke, Robert. *Brooke's New Cases*. London: Best and Place, 1578.
Coke, Edward. *The First Part of the Institutes of the Laws of England*. 1628. Reprinted by Francis Hargrave, Esq. London: T. Wright, 1788.
_____. *Reports*. 1658. Reprint edited by George Wilson, parts III, IV. London: T. Whieldon, 1777.
_____. *The Second Part of the Institute of the Laws of England*. Reprint. London: E. & R. Brooke, 1797.
Dyer, James. *Reports*. Reprint edited by John Vaillant, Vols. I-III. London: Butterworth, 1794.
Johnson, J., ed. *The Laws Respecting Women*. 1777. Reprint. New York: Oceana Publications, Inc. 1974.
Pickering, Danby, ed. *Statutes at Large*. Vol. 4. Cambridge: Bentham, 1763.
Sheppard, William. *The Faithful Councellor Part I*. London: T. Brewster, 1653.
Statutes of the Realm. 1810. Reprint. Vols. II, IV. London: Dawsons of Pall Mall, 1963.
Wingate, Edmond. *Maximes of Reason of the Common Law of England*. London: W. Lee, 1658.

II. Treatises

Baron and Feme: A Treatise of Law and Equity Concerning Husband and Wives. 3rd rev. ed. London: T. Waller, 1738.
Brograve, John. "Jointures." In *Three Learned Readings Made Upon Three Very Usefull Statutes*. London: W. Lee, 1648.
"I. L." and "T. E.", eds. *Woman's Lawyer*. London: John More, 1632.

III. Secondary Sources

Atherley, Edmund G. *A Practical Treatise of the Law of Marriage and Other Family Settlements.* Philadelphia: John Littell, 1840.

Bean, J. M. W. *The Decline of English Feudalism 1215-1540.* New York: Barnes & Noble, Inc., 1968.

Bell, Sydney S. *The Law of Property as Arising from the Relations of Husbands and Wives.* Philadelphia: T. & J. W. Johnson, 1850.

Black, Henry C. *Black's Law Dictionary.* St. Paul: West Publishing Co., 1979.

Bonfield, Lloyd. *Marriage Settlements 1601-1740.* London: Cambridge Univ. Press, 1983.

Bright, John. *A Treatise on the Law of Husband and Wife as Respects Property.* 2 vols. London: William Benning and Co., 1849.

Cioni, Maria. *Women and Law in Elizabethan England With Particular Reference to the Court of Chancery.* New York: Garland Publishing, Inc., 1985.

Cruise, William. *Digest of the Laws of England Respecting Real Property.* Vol. 1, 2d rev. ed. London: J. Butterworth, 1818.

_____. *An Essay on Uses.* London: J. Butterworth, 1795.

Gilbert, Geoffrey. *The Law of Uses and Trusts.* 3rd rev. ed. London: W. Reed, 1811.

Ives, E. W. "The Genesis of the Statute of Uses," *English Historical Review* 82 (1967): 673-97.

Kenny, Courtney S. *Law of England on Effects of Marriage on Property.* London: Reeves and Turner, 1879.

McFarlane, K. B. *The Nobility of Later Medieval England.* Oxford: Clarendon Press, 1973.

Milsom, S. F. C. *Historical Foundations of the Common Law.* London: Butterworth, 1969.

Perkins, John. *A Treatise of the Laws of England.* London: Henry Lintot, 1757.

Plucknett, Theodore. *A Concise History of the Common Law.* Boston: Little, Brown and Co., 1956.